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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ROBERT BROWN,

Petitioner,

- against -

UNITED STATES OF AMERICA

Respondent.

97 Cr. 1105 (HB)

ORDER

Hon. HAROLD BAER, JR., District Judge:

WHEREAS, Petitioner Robert Brown ("Petitioner" or "Brown"), appearing *pro se*, filed a "Motion for Clarification Judgment of Commitment to Reflect the Defendant['s] True Birth Name" with this court on September 29, 2009 (the "Motion"); and

WHEREAS, liberally construed for the benefit of the *pro se* litigant, the Motion seeks an order from the court to alter the judgment to reflect Petitioner's "true name," Robert Allen Lilienthal, and provides photocopies of documents as evidence thereof; and

WHEREAS, pursuant to Rule 36 of the Federal Rules of Criminal Procedure, a district court may "at any time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission"; and

WHEREAS, the Second Circuit has held that Rule 36 "authorizes a court to correct only clerical errors in the transcription of judgments," and that it "must not be one of judgment or even misidentification, but merely of recitation, of the sort that a clerk or amanuensis [one employed to write from dictation or to copy manuscript] might commit, mechanical in nature." *United States v. Burd*, 86 F.3d 285, 288 (2d Cir. 1996) (quoting *United States v. Werber*, 51 F.3d 342 (2d Cir. 1995) (emphasis added)); and

WHEREAS, the record in this case shows no clerical error with regard to Petitioner's name, demonstrated in particular by the fact that (1) Petitioner signed his plea agreement under the name "Robert Brown," *see* Stipulation and Plea Agreement, p. 8 (Oct. 16, 2000) (Docket # 60) (2) at his plea hearing, Petitioner responded "Robert Brown" to the Magistrate Judge's question, "[S]tate your full name for the court reporter and for the record," Plea Hr'g Tr. at 3:19-22, (Nov. 16, 1999), and (3) at that same hearing, twice responded "Yes" to the Clerk's question, "You are Robert Brown?"; it is hereby

ORDERED, that Petitioner's Motion is DENIED. The Court cannot amend the judgment to change Petitioner's name as it is not a clerical error, but rather a misidentification which was never corrected by the Petitioner. The Clerk of the Court is instructed to close this motion (Docket No. 139) on my docket.

SO ORDERED.

New York, New York
~~November __, 2009~~

Dec 11, 2009

A handwritten signature in black ink, appearing to read "Harold Baer, Jr.", written over a horizontal line.

HAROLD BAER, JR.
United States District Judge